Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P–02–284–95
NH CHAN JCA, KC VOHRAH AND MOHD NOOR AHMAD JJ
6 APRIL 1996

Civil Procedure *— Appeal — Leave to appeal — Appeal to the Court of Appeal — Meaning of 'value of the subject-matter of the claim' — Whether to be based on the claim as pleaded in statement of claim or in judgment — Whether more than RM250,000 — Whether leave to appeal required — Courts of Judicature Act 1964 s 68(1)(a)*

The respondent, by a contract in writing dated 14 September 1989, bought a piece of land from the appellant for the sum of RM99,000. On 7 April 1995, the High Court at Penang ordered specific performance of the contract against the appellant. The appellant filed an appeal in the Court of Appeal. Counsel for the respondent applied by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal was incompetent, as the appellant did not obtain leave to appeal to the Court of Appeal, although the value of the subject-matter of the claim under appeal was less than RM250,000. The issue that arose was whether 'the amount of the claim' or 'the value of the subject-matter of the claim' was to be based on the claim as pleaded in the statement of claim or in the judgment.

Held, dismissing the appeal:

(1) Pursuant to s 68 (1)(a) of the Courts of Judicature Act 1964, no appeal shall be brought to the Court of Appeal when the amount or value of the subject-matter of the claim (exclusive of interest) is less than RM 250,000 except with the leave of the Court of Appeal (see p 331D).

(2) 'The amount of the claim' means the total amount of the claim in the action which has been adjudged to be payable, and if it is not a money claim, it is 'the value of the subject-matter of the claim' in the action which has been adjudged as recoverable, because it is against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought (see p 331E); *Allan v Pratt* (1888) 13 AC 780 followed.

(3) In the instant case, the value of the subject-matter of the order for specific performance was the purchase price of the land, namely, RM99,000. This appeal was, therefore, incompetent as no leave to appeal was obtained from the Court of Appeal (see pp 332H–I and 333A).

[Bahasa Malaysia summary

Penentang, melalui suatu kontrak bertulis bertarikh 14 September 1989, telah membeli sebidang tanah daripada perayu pada harga RM99,000. Pada 7 April 1995, Mahkamah Tinggi di Pulau Pinang telah memerintahkan pelaksanaan spesifik kontrak terhadap perayu. Perayu telah memfailkan satu rayuan di Mahkamah Rayuan. Peguam bagi penentang telah memohon menerusi notis usul supaya rayuan itu ditolak atas alasan bahawa rayuan perayu kepada Mahkamah Rayuan adalah tidak kompeten, oleh kerana perayu tidak memperolehi kebenaran merayu kepada Mahkamah Rayuan, walaupun nilai isi tuntutan itu di bawah rayuan adalah kurang daripada RM250,000. Isu yang timbul adalah sama ada 'amaun tuntutan itu' atau 'nilai isi tuntutan itu' harus berdasarkan tuntutan seperti yang dibentangkan dalam pernyataan tuntutan atau dalam penghakiman.

Diputuskan, menolak rayuan itu:

(1) Menurut s 68 (1)(a) Akta Mahkamah Kehakiman 1964, tiada rayuan boleh dibawa ke Mahkamah Rayuan apabila amaun atau nilai isi tuntutan itu (tanpa faedah) adalah kurang daripada RM250,000 kecuali dengan kebenaran dari Mahkamah Rayuan (lihat ms 331D).

(2) 'Amaun tuntutan itu' bermakna jumlah amaun tuntutan dalam tindakan yang telah diputuskan harus dibayar, dan jika ia bukan suatu tuntutan wang, ia adalah 'nilai isi tuntutan' dalam tindakan yang telah diputuskan boleh didapat kembali, sebab ianya adalah terhadap penghakiman (dan bukan terhadap tuntutan yang dibuat oleh pihak menuntut dalam pliding mereka) bahawa rayuan boleh dibawa (lihat ms 331E); *Allan v Pratt* (1888) 13 AC 780 diikut.

(3) Dalam kes ini, nilai isi perintah untuk pelaksanaan spesifik adalah harga belian tanah itu, iaitu RM99,000. Oleh yang demikian, rayuan ini adalah tidak kompeten sebab tiada kebenaran merayu telah diperolehi dari Mahkamah Rayuan (lihat ms 332H–I dan 333A).]

Notes

For cases on appeals, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 259–699.

Cases referred to

Allan v Pratt (1888) 13 AC 780
Monohary Teresa v Tan Ah Lek [1995] 3 MLJ 365

Legislation referred to

Courts of Judicature Act 1964 s 68(1)(a)

A *Balachandran Mahesan* (*Bala Mahesan & Khairudin*) for the respondent/applicant.

Shanmugam and *Venugopalan Nair* (*S Hameed Venu & Co*) for the appellant.

Cur Adv Vult

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NH Chan JCA (delivering the judgment of the court): Counsel for the respondent in this appeal applies by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal is incompetent as the value of the subject-matter of the claim under appeal C was less than RM250,000 and no leave to appeal to the Court of Appeal was obtained.

Section 68(1)(a) of the Courts of Judicature Act 1964 is as follows:

> 68 (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
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> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to the payable, and if it is not E a money claim, it is 'the value of the subject-matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v Pratt* (1888) 13 AC 780. The Earl of Selborne, giving the judgment of the Privy Council F (consisting of the Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781–782:

> Their Lordships are of opinion that the appeal is incompetent. *The proper measure of value for determining the question of the right of appeal is*, in their judgment, *the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought.* Their Lordships, even if they were G not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v Leclaire* 15 Moore PCC 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. H *The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant.* It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in his claim. If so, which was the case in *Macfarlane v Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-I matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover.

> The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side.
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> Therefore in principle their Lordships think the case is governed by *Macfarlane v Leclaire*, upon the question of value, and they do not think it is at all affected by the circumstance that the court below did not give effect to that objection, but gave leave to appeal. It has been decided in former cases that leave so given does not make the thing right, if it ought not to have been done. (Emphasis supplied.)

The appellant (who was the defendant in the High Court) as 'the person against whom the judgment is passed ... has been adjudged ... to do something as defendant', namely, he was ordered specifically to perform the sale and purchase agreement dated 14 September 1989. An appeal against that judgment will be prohibited if the value of the subject-matter of the judgment for specific performance is below the value of RM250,000 (if leave to appeal to the Court of Appeal has not been obtained).

If 'the amount of the claim' or 'the value of the subject-matter of the claim' is to be based on the claim as pleaded in the statement of claim and not in the judgment, then the purpose of s 68(1)(a) of the Act could be circumvented quite easily by claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000. This easy way to get round the need to obtain leave makes the entire provision of s 68(1)(a) of the Act superfluous. This is how it was put by Mahadev Shankar JCA in *Monohary Teresa v Tan Ah Lek* [1995] 3 MLJ 365, at p 368:

> Such an approach ... could side-track the purpose of s 68(1)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.

In the instant case, the value of the contract (that is to say, the consideration for it) on which specific performance was sought and for which specific performance has been decreed is RM99,000 which was the purchase price.

The respondent by a contract in writing dated 14 September 1989 had bought the land described in the said contract from the appellant for the sum of RM99,000. On 7 April 1995, the High Court at Penang ordered specific performance of the contract against the appellant, which means that the appellant will have to transfer the land described in the said contract to the respondent. Thus, 'the value of the subject-matter of the claim' in the action for specific performance which has been adjudged as recoverable by the said order for specific performance is the consideration (the purchase price) for the sale of the land by the appellant to the respondent.

Since the value of the subject-matter of the order for specific performance is the price paid for the said land, namely, RM99,000, this

A appeal is therefore incompetent as no leave to appeal was obtained from the Court of Appeal.

We are therefore constrained to allow the motion to dismiss the appeal with costs.

B *Order accordingly.*

Reported by Isabel Liong

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